DOCKET NO. NNH-CV-6120210-S	:	SUPERIOR COURT
BOSIE KIMBER, ET AL.	:	J.D. OF NEW HAVEN
V.	:	AT NEW HAVEN
RENEE DOMINGUEZ	:	MARCH 28, 2022

PLAINTIFFS' INITIAL MEMORANDUM OF LAW

I. Preliminary Statement

Under the Charter of the City of New Haven (the "Charter"), the Mayor maintains the prerogative of recommending individuals to various officers, board, and commissions, which are "necessary for the efficient, orderly, economical and coordinated operation of the municipal government. Per the Charter, the Mayor nominates, and with the consent of the Board of Alders, appoints nominees. The Charter also grants to the Mayor the power to fill vacancies, which must be submitted to the Board of Alders within a certain time, and in that event the appointment is temporary.

The Board of Alders can reject the Mayor's recommendation/nominee, triggering a thirty (30) day period within which the Mayor can resubmit the nomination for approval by the Board of Alders.

The New Haven Charter Article IV. Section 1(A)(3) provides:

> Other than to membership on a Board or Commission, the Mayor may designate an individual to hold a position in an acting capacity pending the selection of a nominee, but **no person may hold such a position for more than (6) months** without being submitted for confirmation by the Board.(emphasis added)

The Charter speaks for itself. The clear meaning of the New Haven Charter places a six month limitation on temporary or acting appointments. But if the defendant's position holds, then the Board of Alders' authority in approving or rejecting appointments is abrogated. The Mayor, by use of a temporary appointment of indefinite duration, effectively draws to himself the whole control over city officers in defiance of the Board of Alders rejection.

II Factual Background

The parties have stipulated to the following facts:

1. The plaintiffs, Bosie Kimber and Donarell Elder, are New Haven residents and taxpayers with standing to pursue this action.

2. The defendant, Renee Dominguez, in her capacity as the Acting Chief of Police of the City of New Haven, is a Public Officer whose title to office may be challenged in a quo warranto proceeding. The defendant joined the New Haven Police Department on October 16, 2002 and since then has been continuously employed by the City of New Haven as a member of the Police Department in various positions.

3. On June 30, 2021, Chief Otoniel Reyes retired and vacated the office of the Chief of Police of the City of New Haven. At the time the defendant was an Assistant Chief of Police.

4. On July 1, 2021, Assistant Chief Renee Dominguez was appointed by Mayor Justin Elicker to assume that vacant office and began serving as Acting Chief of Police of the City of New Haven.

5. On December 6, 2021, Mayor Elicker timely submitted the defendant's nomination for permanent Chief of Police to the Board of Alders at a public meeting.

6. At that December 6, 2021 public meeting, the Board of Alders rejected Acting Chief Dominguez's nomination by a voice vote, triggering a thirty (30) day period within which the Mayor could resubmit Acting Chief Dominguez's nomination for approval by the Board of Alders.

7. On December 10, 2021, prior to resubmission of her nomination, Acting Chief Dominguez withdrew her name from further consideration as permanent Chief of Police and announced her intention to retire pending the completion of a search for a new permanent Chief of Police.

8. Following that announcement, on December 10, 2021, Mayor Elicker requested the defendant to remain in the office of the Chief of Police in an acting capacity until a new permanent Chief of Police was found.

9. At all times since July 1, 2021 and continuing to the present day, Acting Chief Dominguez has held appointed title to the Office of the Chief of Police of the City of New Haven, and has exercised the rights, responsibilities, and duties of that office.

III LEGAL STANDARD

"Actions in quo warranto are governed by Connecticut General Statutes Section 52-491." New Haven Firebird Society v. Bd. Of Fire Commissioners, 219 Conn 432, 436 (1991). Section 52-491 provides:

> When any person or corporation usurps the exercise of any office, franchise or jurisdiction, the Superior Court may proceed, on a complaint in the nature of a quo warranto, to punish such person or corporation for such usurpation, according to the course of the common law and may proceed therein and render judgment according to the course of the common law.

The critical feature of the writ, bearing on the issues now before this Court, is the placement of the burden - the defendant must establish lawful entitlement to their

offices by proving their "appointments" were proper under the New Haven Charter. See, Bateson v. Weddle, 306 Conn 1, 11 (2012).

The defendant cannot carry her burden in this case because the New Haven Charter's plain and unambiguous language controverts defendant's position. "When a charter is construed, the rules of statutory construction generally apply." Norwich v. Norwich Wilbert Vault Co., Inc., 208 Conn. 1, 9 (1988). Under Connecticut's so called plain meaning rule,

> The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extra textual evidence of the meaning of the statue shall not be considered.

Conn. Gen. Stat. Section 1-2z. Moreover, "[t]he enactment must be examined in its entirety and its parts reconciled and made operable so far as possible." Alexander v. Ret. Bd. Of Waterbury, 57 Conn.App. 751, 759 (2000)." While the defendant may resort to arguments that look beyond the Charter, A court will not torture words to import ambiguity where the ordinary meaning leaves no room for ambiguity, and words do not become ambiguous simply because lawyers or laymen contend for different meanings." New London v. Zoning Bd. Of Appeals of Waterford, No. 51-38-03, 1991 WL 60498 at *3(Conn. Super. Ct. Apr. 3, 1991), aff'd, 29 Conn. App. 402 (1992).

IV Argument

The Charter's requirement that "the Mayor may designate an individual to hold a position in an acting capacity pending the selection of a nominee, but no person may hold such a position for more than (6) months" can only be read to mean that such appointments are of limited duration. A reading of the Charter that would allow the

Mayor to appoint individuals to indefinite terms would controvert the clear language of the Charter, nullify certain powers granted to the Board of Alders, negate other provisions of the Code of Ordinances, and frustrate the Charter's entire recommendation/appointment scheme. The notion that temporary appointments can exist indefinitely would require an interpretation of the charter clearly inconsistent with the meaning of the word "temporary" and in violation of the maxim that legislative enactments should be construed in accord with the common and ordinary meanings of the words used. As such, the defendant's temporary term as Acting Chief expired on January 1, 2022.

Moreover, under the plain meaning doctrine, any interpretation of a statute that would "render . . . other words in [the statute] unnecessary surplusage. . . . would violate the 'basic tenant of statutory construction that the legislature [does] not intend to enact meaningless provisions." Felician Sisters of St. Francis of Connecticut, Inc. v. Historic Dist. Comm'n of Enfield, 284 Conn. 838, 849 (2008)."[I}n construing statutes," then, Connecticut courts "presume that there is a purpose behind every sentence, clause, or phrase used in an act and that no part of a statute is superfluous." Id. at 850.

This court must construe the city charter so as to preserve all its provisions, and maintain the just authority both of the Mayor and the Board of Alders. An officer rejected by the Board of Alders cannot be re-appointed by the Mayor. It must be presumed the Aldermen acted in good faith, and believed the officer unfit for the office. If they have abused their power they are answerable to the people who elected them. The charter gave them authority to act on the nomination and to reject it. The charter required the mayor to consult them in the appointment, and they have given their

advice. The assent of both is required to invest the appointee with the office, and the Alders have refused their assent and rejected the appointee. By the charter, although the Alders cannot say who shall fill the vacant office, they have a right to say who shall not fill it. The defendant must leave office. This action is compelled by statutory text and common sense. Its provisions are not susceptible to the defendant's conclusion-driven reasoning-that the defendant remain until such time as a replacement is found. The Defendant's position creates an absurd and unworkable result. 'Good faith of the parties will not validate an illegal appointment and will not be sanctioned by the courts.' Resnick v. Civil Service Commission, 156 Conn. 28, 32, 238 A.2d 391 (1968); Fitzgerald v. City of Bridgeport, 187 Conn. App. 301, 323–24, 202 A.3d 385, 399–400 (2019).

Accordingly, this Court should not hesitate to grant the relief requested in plaintiffs' quo warrants action.

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CERTIFICATION

This is to certify that a copy of the foregoing was emailed or mailed, postage prepaid, this date, to the following counsel of record.

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